

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

FEB - 4 2009

GORDON D. BARNETT

Plaintiff

vs.

**U.S. DEPARTMENT OF LABOR
200 Constitution Avenue, NW
Washington, DC 20210**

Defendant

§
§
§
§
§
§
§
§
§

DAVID J. MALAND, CLERK
BY
DEPUTY *Debra McMillan*

Civil Action No. _____

1 : 09 CV 0146

Judge Heartfield

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW GORDON D. BARNETT, Plaintiff in the above cause, complaining against U.S. Department of Labor, Defendant, and for cause of action would show the Court as follows:

INTRODUCTION

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 et seq., seeking injunctive, declaratory, and other appropriate relief including the release of agency records generated by the United States Department of Labor's Occupational Safety & Health Administration ("OSHA") and requested by Plaintiff.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) in that Plaintiff resides in this district.

1

PARTIES

3. Plaintiff is an individual who resides in Beaumont, Texas. Plaintiff is employed as an attorney with Dodson Law Offices, P.C., 8245 Gladys, Ste. 102, Beaumont, Texas 77706.¹ Dodson Law Offices, P.C. also represents Zoi Sanchez in a claim for the death of her father.

4. Defendant United States Department of Labor is a department of the Executive Branch of the United States Government. The Department of Labor is an agency within the meaning of 5 U.S.C. § 552(f), and may be served pursuant to Federal Rule of Civil Procedure 4(i), by sending a copy of the summons and complaint, by certified or registered mail, to the civil-process clerk at the United States attorney's office for the Eastern District of Texas, Beaumont Division, at 350 Magnolia Ave., Suite 150, Beaumont, Texas 77701, with copies forwarded by certified mail to the Attorney General of the United States at the United States Department of Justice, Justice Management Division, 950 Pennsylvania Ave., NW Suite 1111, Washington, D.C. 20530 and the U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210.

FACTS

5. On November 5, 2007, Plaintiff submitted a FOIA request, attached hereto as Exhibit A, to OSHA requesting any documentation regarding an industrial accident that occurred on August 21, 2007 in Sundown, Texas. The request was for the accident investigation report and accompanying documentation regarding the death of Mr. Alejandro Sanchez.

¹ The sole shareholder in Dodson Law Offices, P.C., Joe Michael Dodson, is the great uncle to Zoi Sanchez, the minor daughter of Alexandro Sanchez, the individual who was killed in the accident that is subject of the OSHA report that Plaintiff seeks in its FOIA claim.

6. On or about December 12, 2007, OSHA provided approximately 106 pages of documentation in response to Plaintiff's request, along with correspondence waiving the applicable fee. *See* copy of correspondence waiving fee attached hereto as Exhibit B. Numerous pages were withheld in their entirety based upon several exemptions under 5 USC § 552 (b). The following documentation was improperly withheld from Plaintiff's request, based exclusively upon Exemption # 6:²

- A. Employee interviews – 9 pages
- B. Other statements – 2 pages
- C. Company's job safety analysis – 16 pages
- D. Company rig inspections & work orders – 22 pages
- E. Company maintenance inspection reports – 31 pages
- F. Company Rig Layout – 2 pages
- G. Company electric work invoices – 11 pages
- H. Company moving reports – 32 pages
- I. Company training info – 8 pages
- J. Company contract – 17 pages
- K. Company pages from company's safety program – 37 pages

See excerpts from documents produced pursuant to FOIA request identified as Exhibit C.

7. On February 18, 2008, within the prescribed ninety-day period, Plaintiff filed an appeal challenging Defendant's decision to withhold the foregoing listed documents. *See* Exhibit D. By form letter dated February 29, 2008, Defendant forwarded its acknowledgment of Plaintiff's appeal and subsequently informed Plaintiff, by telephone, that Defendant has a four-year backlog. *See* Department of Labor letter acknowledging receipt of appeal attached hereto as Exhibit E.

² Exemption 6 is based upon 5 USCS § 552 (b)(6) exempting from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

8. To date, Defendant has not responded to Plaintiff's appeal as required by 5 U.S.C. § 552(a)(6)(A)(ii). As such, Defendant has constructively denied Plaintiff's appeal and Plaintiff is deemed to have fully exhausted its administrative remedies.

CLAIMS FOR RELIEF

9. Plaintiff repeats the allegations in paragraphs 5-8.

10. Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3), to obtain the records it has requested, and Defendant has no legal basis for their actions in withholding the right of access to such documents, as their reliance on Exemption 6 has no justification in law or fact.

11. Department of Labor's failure to disclose documents responsive to Plaintiff's request constitutes agency action unlawfully withheld, in violation of the APA, 5 U.S.C. §§ 701-706. Department of Labor's failure in this matter is arbitrary, capricious, and an abuse of discretion, not in accordance with the law and without observance of procedure required by law, all in violation of the APA.

ATTORNEY'S FEES

12. Attorney's fees are authorized in this action pursuant to 5 U.S.C. § 552 (a)(4)(E).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon a final hearing of this cause, that this Court:

(1) Declare that Defendant's failure to produce requested documents is unlawful and constitutes a violation of FOIA;

(2) Declare that Defendant's reliance on Exemption 6 is unlawful.

- (3) Order Defendant to produce the withheld documents outlined in paragraph 6 without delay;
- (4) Award plaintiff his costs and reasonable attorneys fees incurred in this action; and
- (5) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



JOE MICHAEL DODSON, Lead Attorney
DODSON LAW OFFICES, P.C.
8245 Gladys, Suite 102
Beaumont, Texas 77706
Telephone: (409) 861-4141
Facsimile: (409) 861-0033
Texas Bar No. 05941200
E-Mail: Mdodson334@aol.com

ATTORNEY FOR PLAINTIFF
GORDON D. BARNETT